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14 Aug 62

62-5106

27 June 1962

MEMORANDUM FOR: General Counsel

SUBJECT: State-Defense Military Information Control  
Committee (S-DMICC)

1. Several weeks ago I informed you that on the basis of preliminary research the Director of Central Intelligence has authority to disseminate national and interdepartmental intelligence to a foreign government in accordance with the provisions of National Security Council Intelligence Directive No. 1. Having completed this study, I submit the following report, which supports that conclusion. Included is information on the authority and formation of S-DMICC.

2. By memorandum of 27 February 1946 to the Secretary of State, President Truman approved a statement of "Basic Policy Governing the Disclosure of Classified Military Information to Foreign Governments," which had been submitted to the President on that day by the Secretary of State and which had been approved previously by the Secretaries of State, War, and Navy. The President by his memorandum also directed the three Secretaries "to exercise control of the disclosure of classified military information as contemplated in the statement of policy."

3. The policy was originally recommended by the Joint Chiefs of Staff to "serve as a guide, from the viewpoint of military security, in determining what military information . . . which bears a military security classification may be disclosed to foreign governments." The type of information contemplated under the policy was set out in paragraph 2. "Military Information" was defined as "all information primarily under the control and jurisdiction of the United States armed forces, or of primary interest to them." Two principal categories of military information were described: (1) "Intelligence as a category of military information refers to the matters alien to the United States. It comprises all military information about possible or actual enemies and possible or actual theaters of operation;" and (2) "Information Pertaining to the United States which excludes intelligence is military information which

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pertains to the United States and to U. S. activities." "Intelligence" is mentioned again in paragraph 4 of the policy paper, wherein it states: "Neither the source of intelligence nor its method of acquisition will be disclosed to a foreign government without specific authorization from the department or agency by which the intelligence was obtained."

4. In his memorandum to the President accompanying the policy statement, Secretary of State Byrnes described it as "necessary as a guide to the three Departments in the control of the disclosure of such classified military information." He pointed out that "disclosure must be consistent with governmental policy, with regard to atomic energy and similar or related information for which special machinery for release has been or may hereafter be established."

5. The responsibility for developing, formulating and promulgating policies and procedures governing the disclosure of classified United States military information to foreign governments consistent with the approved policy now rests with the State-Defense Military Information Control Committee (S-DMICC). Membership of the Committee consists of representatives of the Secretaries of State, Defense, Army, Navy and Air Force with the State member serving as chairman. A representative of CIA serves as an observer to the Committee.

6. In implementation of its responsibility, S-DMICC has established, with the approval of the Secretaries of State and Defense, a "policy governing the disclosure to foreign governments of ~~CLASSIFIED~~ military information." The document containing this policy is labeled MIC 206/29 (Revised) dated 15 November 1955, to which amendments have been added. In this document "Military Information" is defined as "information under the control or jurisdiction of the Department of Defense, its departments and agencies, or of primary interest to them." Intelligence is defined as "evaluated information concerning actual and potential situations and conditions relating to activities of other nations or to foreign or enemy-held areas."

7. Paragraph II of MIC 206/29 (Revised) sets down the principle that "Classified military information shall not be disclosed to foreign governments unless / certain conditions / are met." Paragraph V (Releasable Information) A (Procedure and Authority) states that subject to certain limitations and conditions certain classified military information "may be considered for release to foreign governments by the Department of Defense in accordance with / certain standards / PROVIDED: Prior to release by the Department of Defense, concurrence in the release is obtained from such other Government departments or agencies as have an interest in the information." There follows a functional listing of information which delineates "the areas of classified military information which may be released to foreign governments" subject again to those

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certain limitations. One of these areas is entitled "Intelligence," and following it this language appears:

"(20) Intelligence\* which is essential to the furtherance of the common military objectives of the U. S. and the recipient government, or to enable that government to assess the capabilities, intentions, and probable courses of action of a potential aggressor. (The disclosure of intelligence estimates, studies or conclusions of joint interest must be jointly approved, such joint approval to include concurrence in the substance).

\*EXCLUDING the following:

(a) Evaluated intelligence on the recipient country or its possessions, dependencies or dominions, except that based upon information obtained from or with the consent of the recipient country. For the purposes of this subparagraph, the British Commonwealth nations are considered as a single nation; or

(b) Intelligence which reveals:

i. A source or method of acquisition that would jeopardize the operation or existence of a covert intelligence activity;

ii. A source or method of acquisition that would identify and thereby jeopardize the safety, welfare or reputation of any individual connected therewith, or preclude the future use of such source or individual in the collection of intelligence or other activities;

iii. A source or method of acquisition which the recipient nation would be likely to use for propaganda purposes against the United States, or to impede a United States intelligence collection effort; or

iv. Significant information on results of major intelligence collection efforts, which the recipient nation would be likely to use against U. S. interests."

8. The above wording must be read in conjunction with the fact that what is of concern here is military information as set forth early in the policy paper and as defined in the memorandum to the President from the Secretary of State, dated 27 February 1946. Unfortunately, the definition of "intelligence" appearing in the policy paper MIC 206/29 (Revised) and the language describing

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intelligence in paragraph V B is broad language and, if read without the connection with military information, could be misconstrued to mean all intelligence, thereby making it appear as if S-DMICC and the State and Defense Departments have exclusive jurisdiction over the release to foreign governments of all intelligence. Based upon the 27 February 1946 memorandum with the attached policy statement to the President, it is obvious that what was contemplated under the original policy was military information and that the intelligence which was included was, narrowly, military information about possible or actual enemies.

9. S-DMICC policy on the disclosure of intelligence was clarified and the limits defined as to military intelligence in terms of the jurisdiction of S-DMICC as a result of an exchange of memoranda between the Director of Central Intelligence and the Secretaries of State and Defense. On 2 May 1958 the Director of Central Intelligence wrote to the Secretaries of State and Defense recommending that the Secretaries' "authority to exercise control of the release to foreign governments of classified military information . . . will not be applied to national intelligence and interdepartmental intelligence which may contain military intelligence." The Secretaries of State and Defense, by memorandum dated 11 June 1958 and 27 May 1958, respectively, accepted the recommendation of the Director of Central Intelligence, thus reiterating that policy of nondisclosure applied to classified military information.

10. Under NSCID 1, the Director of Central Intelligence has authority to disseminate national and interdepartmental intelligence to foreign governments upon his determination and the concurrence of the IAC that such action would substantially promote the security of the United States, provided that such dissemination is consistent with existing statutes and Presidential policy. NSCID 1, Revised 18 January 1961, reads in part as follows:

"d. The Director of Central Intelligence shall disseminate national intelligence to the President, members of the National Security Council, as appropriate, members of the U. S. Intelligence Board and, subject to existing statutes, to such other components of the Government as the National Security Council may from time to time designate or the U. S. Intelligence Board may recommend. He is further authorized to disseminate national intelligence and interdepartmental intelligence produced within the U. S. Intelligence Board structure on a strictly controlled basis to foreign governments and international bodies upon his determination with the concurrence of the U. S. Intelligence Board, that such action would

substantially promote the security of the United States: Provided, That such dissemination is consistent with existing statutes and Presidential policy including that reflected in international agreements; and provided further that any disclosure of FBI intelligence information shall be cleared with that agency prior to dissemination. Departmental intelligence and interdepartmental intelligence produced outside the U. S. Intelligence Board subcommittee structure may be disseminated in accordance with existing statutes and Presidential policy including that reflected in international agreements."

Conclusions

1. The State-Defense Military Information Control Committee owes its existence to a Presidential Memorandum approving a statement of "Basic Policy Governing the Disclosure of Classified Military Information to Foreign Governments" submitted to the President by the Secretary of State. With this as authority a joint committee was set up for the purpose of, and responsible for:

"A. Developing, formulating and promulgating policies and procedures governing the disclosure of classified military information and for considering proposals for exceptions to those policies.

"B. Submitting to the Secretaries of State and Defense recommendations for establishment of, or changes in, basic disclosure policies.

"C. Exercising, through a permanent Secretariat, general supervision of the implementation of U. S. policies governing release of all classified military information, other than strategic guidance and planning, to NATO nations and other nations receiving U. S. military aid.

"D. Making determinations as to the ability of foreign governments to afford security protection to classified military information (including classified atomic military information, when such determinations are requested by the Secretary of State) to be released to them by the United States."<sup>1/</sup>

2. S-DMICC operates without statutory authority but carries out executive functions in support of the duties of the Secretary of State and Defense.

1/ Memorandum for the National Security Council, Subject: Disclosure of Classified Military Intelligence Information, at 5-6 (23 July 1959)

3. The jurisdiction of the Committee is limited to the subject matter of the basic policy statement, namely, classified military information.

4. While this includes military intelligence, it does not include national intelligence, and where classified military intelligence is included in national intelligence the Secretaries of State and Defense have explicitly agreed that their control over the release of military intelligence will not be applied.

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Orig - Subject

*Security is C.R. Concerned*

Signer

Chrono

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Remarks: Walt: Some time back the Director asked that we review legalities of the establishment and functions of S-DMICC. The attached paper rehearses the history of S-DMICC and how we finally made arrangements so that it did not exercise control over the release of intelligence estimates to foreign countries. This is contrary to the information Bob Amory had given the Director. Consequently, the Director's further question as to whether S-DMICC has outlived its usefulness may now be moot. I have been intending to take this up at an Executive Committee meeting, but this has been difficult as either there (over)

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FROM: NAME, ADDRESS AND PHONE NO.

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General Counsel 7D01

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haven't been any or other items have occupied  
the full schedule. Let me know if anything  
more is wanted from this office.



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LRHouston